

1 MORGAN B. WARD DORAN

2 Email: warddoranm@sec.gov

3 Attorney for Plaintiff
4 Securities and Exchange Commission
5 Rosalind R. Tyson, Regional Director
6 John M. McCoy III, Regional Trial Counsel
7 5670 Wilshire Boulevard, 11th Floor
8 Los Angeles, California 90036-3648
9 Telephone: (323) 965-3998
10 Facsimile: (323) 965-3908

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

EARTHLY MINERAL SOLUTIONS, INC.,
NATURAL MINERALS PROCESSING
COMPANY, ROY D. HIGGS, FRANK L.
SCHWARTZ, and RICK LAWTON,

Defendants.

Case No. 2:07-CV-01057-JCM-(LRL)

JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AS TO

DEFENDANT FRANK L. SCHWARTZ

1 The Securities and Exchange Commission having filed a Complaint and First Amended
 2 Complaint, and Defendant Frank L. Schwartz (“Defendant”) having entered a general
 3 appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this
 4 action; consented to entry of this Judgment of Permanent Injunction and Other Relief without
 5 admitting or denying the allegations of the Complaint and First Amended Complaint (except as
 6 to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal
 7 from this Judgment:

8 **I.**

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
 10 Defendant’s agents, servants, employees, attorneys, and all persons in active concert or
 11 participation with them who receive actual notice of this Judgment by personal service or
 12 otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities
 13 Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a), in the offer or sale of any security by the
 14 use of any means or instruments of transportation or communication in interstate commerce or
 15 by use of the mails, directly or indirectly:

- 16 (a) to employ any device, scheme, or artifice to defraud;
- 17 (b) to obtain money or property by means of any untrue statement of a material fact
 18 or any omission of a material fact necessary in order to make the statements
 19 made, in light of the circumstances under which they were made, not misleading;
 20 or
- 21 (c) to engage in any transaction, practice, or course of business which operates or
 22 would operate as a fraud or deceit upon the purchaser.

23 **II.**

24 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
 25 and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or
 26 participation with them who receive actual notice of this Judgment by personal service or
 27 otherwise, are permanently restrained and enjoined from violating, directly or indirectly, Section
 28 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and

Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act, 15 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the

1 effective date of the registration statement) any public proceeding or examination
2 under Section 8 of the Securities Act, 15 U.S.C. § 77h.

3 **IV.**

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
5 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
6 participation with them who receive actual notice of this Judgment by personal service or
7 otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange
8 Act, 15 U.S.C. § 78o(a), by making use of the mails or any means or instrumentality of interstate
9 commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of,
10 any security (other than an exempted security or commercial paper, bankers acceptances, or
11 commercial bills), without registering with the Commission as a broker or dealer.

12 **V.**

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
14 shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty
15 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the
16 Exchange Act, 15 U.S.C. § 78u(d)(3). The Court shall determine the amounts of the
17 disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be
18 calculated based on the rate of interest used by the Internal Revenue Service for the
19 underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with
20 the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on
21 such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal
22 securities laws as alleged in the Complaint and the First Amended Complaint; (b) Defendant may
23 not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such
24 motion, the allegations of the Complaint and the First Amended Complaint shall be accepted as
25 and deemed true by the Court; and (d) the Court may determine the issues raised in the motion
26 on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony,
27 and documentary evidence, without regard to the standards for summary judgment contained in
28 Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's

1 motion for disgorgement and/or civil penalties, the parties may take discovery, including
2 discovery from appropriate non-parties.

3 **VI.**

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
5 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant
6 shall comply with all of the undertakings and agreements set forth therein.

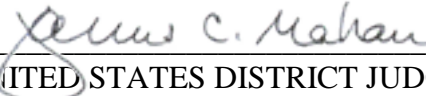
7 **VII.**

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
9 jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

10 **VIII.**

11 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil
12 Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

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14 Dated: August 20, 2010
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19 UNITED STATES DISTRICT JUDGE
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